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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/540,351

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Alexander Christ

CHRIST

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EXAMINER

SULLIVAN, DEBRA M

ART UNIT

PAPER NUMBER

3725

NOTIFICATION DATE

DELIVERY MODE

08/04/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

INFO@FEIEREISENLLC.COM

<b>Office Action Summary</b>	<b>Application No.</b> 10/540,351	<b>Applicant(s)</b> CHRIST ET AL.	
	<b>Examiner</b> DEBRA M. SULLIVAN	<b>Art Unit</b> 3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 February 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 16 and 19-30 is/are pending in the application.
- 4a) Of the above claim(s) 26-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16 and 19-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION*****Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 8, 2010 has been entered.

***Specification***

The disclosure is objected to because of the following informalities: (1) the specification is missing section headings (i.e. Background of the Invention, Summary of the Invention, etc) and (2) the specification contains references to claims that have been cancelled, an example is in paragraph 0006 which references claim 1. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 22- 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 22-24 appear to be directed to the combination of the can body and spraying system however, the spraying system is not positively recited in claim 16, therefore the limitation directed to the combination of the can body and spraying system renders the claim indefinite.

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 16, 19-21 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chupak (US 6,907,653) in view of Potts et al (US D462,274). In reference to claim 1, Chupak discloses a spray can (10) comprising of a can body (14) made of metal [see col. 1 lines 16-18] and defining an axial direction and a circumference and a substantially constant wall thickness along its circumference and along substantially the entire axial height, the can body having a lower can portion with an integrally formed bottom and a substantially circular cross section and an upper can portion having a shaped region with a shoulder area having a collared can opening for insertion of a spraying system wherein the can body has a substantially constant wall thickness both along its circumference and its axial height [see FIG 1]. Chupak discloses the invention substantially as claimed except for wherein the can body has an upper portion having a non-circular cross section. However, Potts et al teaches of providing a container with a can body having a lower portion with an integrally formed bottom and a substantially circular cross section and an upper can portion having a shaped region with a shoulder area having a collared can opening and the upper can portion having a non-circular cross section wherein a circumferential length of the lower can portion is equal in size to a circumferential length of the shaped region. It would have been obvious to one having ordinary skill in the art to substitute the structure of the can body of Chupak with the known can body structure as taught by Potts et al to obtain the

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predictable results of having a easy grip can body [*KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1742, 82 USPQ2d 1385, 1396 (2007)].

In reference to claims 19 and 20, Potts et al teaches that the non-circular cross section is square, however it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the shaped region to be either oval, ellipsoidal, triangular or rectangular, since it has been held to be within the general skill of a worker in the art to select a known shape structure on the basis of its suitability for the intended use as a matter of obvious design choice [*In re Leshin*, 125 USPQ 416].

In reference to claim 21, Chupak further discloses the can opening of the can body is standardized for insertion of the spraying system of standard configuration.

In reference to claim 25, Chupak further discloses the metal of the can body is aluminum [see col. 3 lines 34-37].

2. Claims 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chupak in view of Potts et al as applied to claim 16 above, and further in view of Vandoninck (US 5,341,968). Chupak further discloses the can body to be an aerosol container. The combination of Chupak and Potts et al discloses the invention substantially as claimed except for wherein the combination of the can body and spraying system is constructed for a filling pressure between 5 and 35 bar, 10 and 20 bar or 12 and 18 bar. However, Vandoninck teaches that it is known in the art for aerosol cans to contain a pressure of 12 bar. Therefore it is inherent that the aerosol can body of Chupak is constructed for a filling pressure of 12 bar since it is well known in the art for aerosol cans to be filled with that amount of pressure, as taught by Vandoninck.

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Debra Sullivan whose telephone number is (571) 272-1904. The examiner can normally be reached Monday - Friday 8am - 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dana Ross can be reached at (571) 272-4480. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Debra M Sullivan/  
Examiner, Art Unit 3725